IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7868 of 1999

to

FIRST APPEAL No 7875 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KRISHAK BHARATI COOPERATIVE LTD.

Versus

JAMUBHAI NAROTTAMBHAI

Appearance:

MR MANISH R BHATT for Appellant
MR NL PATEL for Respondent No. 1
MR AD OZA, Ld. Govt.Pleader for Respondent No.2.

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 22/03/2000

COMMON ORAL JUDGEMENT {Per: Kadri, J.}

First Appeals No.7868/99 to 7871/99 are filed by the appellant under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated March 21, 1999, passed by the learned Civil Judge (S.D.), Surat, in Land Reference Case No.111/86, 113/86, 114/86 and 115/86, whereas First Appeals No.7872/99 to 7875/99 are filed by the appellant challenging the common judgment and award dated March 21, 1999, passed by the learned Civil Judge(S.D.), Surat, in Land Reference Case No.206/87 to 209/87. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. The agricultural lands of the respondents-claimants situated at village Ichchhapore, Tal.Choryasi, District Surat, came to be acquired for the public purpose of construction of `Hazira Fertilizer Railway Line', by issuance of the notification under Section 4(1) of the Act on July 3, 1981, and July 8, 1982. After following the usual procedure under the Act, the Land Acquisition Officer made his award under Section 11 of the Act on July 21, 1985, in Land Acquisition Case No.34 of 1981 and in Land Acquisition Case No.18 of 1982 by offering compensation of the acquired lands of the respondents-claimants situated at village Ichchhapore at the rate of Rs.4/- per sq.mt.

3. The respondents-claimants were of the opinion that their lands were fertile and situated in a developed locality and the compensation offered by the Land Acquisition Officer was inadequate and, therefore, they submitted applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court at Surat, which came to be numbered as mentioned in para 1 of the judgment.

4. The claimants before the reference court claimed compensation at the rate of Rs.50/- to Rs.60/- per sq.mt. To substantiate their claim before the reference court, the claimants examined Thakorbhai Kalidas Patel at Exh.24, and Prabhubhai Maganbhai Patel at Exh.10. The appellant and the Land Acquisition Officer did not examine any witness nor produced documentary evidence.

The Reference Court, for determination of market value of the acquired lands, relied on previous award of Land Reference Case No.65 of 1984 which related to acquired lands of same village Ichchhapore by which the reference court had determined the market value of the acquired lands of village Ichchhapore at the rate of Rs.12/- per sq.mt. as on 18th February, 1982. It is an admitted fact that, previous award rendered in Land Reference Case No.65 of 1984 and allied matters, were challenged before the High Court by the State Government by filing First Appeals Nos.531/98 to 551/98 which came to be dismissed by this Court (Coram: S.K.Keshote, J.) on 6th August, 1998. Therefore, it becomes evident that previous award rendered in Land Reference Case No.65 of 1984 and allied matters had become final. Admittedly, the lands which were the subject matter of previous award were situated in the village Ichchhapore whereas the present acquired lands under appeals are also situated in the same village. The claimants witness Thakorbhai Kalidas Patel had deposed before the reference court that, the acquired lands of previous award were in all respects comparable and relevant for determination of market value of the present acquired lands. The certified copy of the previous award was brought on the record of these appeals by consent of the learned advocates for the parties as the claimants witness had referred it in his deposition but the same could not be produced in the reference court. It is settled legal principle that in absence of sale instances or evidence of expert for determination of market value of acquired lands, court can take resort to previous award which had become final (see the case of Pal Singh and others Vs. Union Territory of Chandigarh reported in AIR 1993 Supreme Court Page 225). The reference court by relying on the previous award rendered in Land Reference Case No.65 of 1984 had determined the market value of the acquired lands at the rate of Rs.12/per sq.mt. which is challenged by the acquiring body by filing the above numbered first appeals.

5. Learned counsel for the appellant has taken us through the entire record and proceedings and submitted that the reference court had erred in relying on the previous award in Land Ref.Case No. 65 of 1984 where the market price of the acquired lands of village Ichchhapore was determined at the rate of Rs.12/- per sq.mt. Counsel for the appellant further submitted that the amount of compensation awarded to the claimants are excessive and therefore these appeals deserves to be allowed.

6. The contentions of the learned counsel for the appellant that the reference court had erred in relying

on the previous award of Land Reference Case No.65 of 1984 for determination of market value of the present acquired lands is devoid of any merits, and deserves to be rejected. The acquired lands of previous award were situated in the same village Ichchhapore and the reference court had determined the market value of the acquired lands of village Ichchhapore as on 18th February, 1982 at the rate of Rs.12/- per sq.mt., but, the notification under Section 4(1) of the Act in the present appeals was issued on July 1981 and July 1982. Therefore the notification of previous award and the notification of the present appeals where issued in near proximity of time. Both the acquired lands of previous award as well as the acquired lands of present appeals are situated in the village Ichchhapore having same fertility and, therefore, we are of the view that, the reference court had not committed any error in relying on the previous award for determination of market value of the present acquired lands. However, during the course of hearing of these appeals, by consent of the learned advocate for the appellant and learned advocates for the respondents M/s.K.M.Sheth, M.B.Farooqui and N.L.Patel have requested this court to determine the market value of the present acquired lands at the rate of Rs.11/- per sq.mt. eventhough we are of the view that the claimants are entitled to receive compensation at the rate of Rs.12/per sq.mt. for the acquired lands but in view of the joint consensus arrived at between the parties, we determine the market value of the acquired lands at the rate of Rs.11/per sq.mt. The claimants would also be entitled to the statutory benefits under section 23(1-A), 23(2) and interest under Section 28 of the amended Act.

7. For the foregoing reasons, the appeals are partly allowed. The market value of the acquired lands situated at village Ichchhapore which are the subject matter of the present appeals is determined at the rate of Rs.11/- per sq.mt. The claimants would also be entitled to the statutory benefits under Section 23(1-A), 23(2) and interest under Section 28 as per the amended Act. The award of the Reference Court be modified accordingly. There shall be no order as to costs. Office is directed to draw the decree in terms of this judgment.

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